

Appeal from a decision of the Montana State Office, Bureau of Land Management rejecting simultaneous oil and gas lease application M 62700 (ND) (Acq.).

Affirmed.

1. Oil and Gas Leases: Applications: Generally

Where a first-drawn applicant for an oil and gas lease in the simultaneous leasing program fails to submit signed lease offers within 30 days of notice by BLM, the application is properly rejected.

2. Notice: Constructive Notice

Where an authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication, that person will be deemed to have received the communication if it was delivered to his last address of record on file in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him. 43 CFR 1810.2.

APPEARANCES: Lawrence E. Welsh, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Lawrence E. Welsh, Jr., has appealed from a decision of the Montana State Office, Bureau of Land Management (BLM), dated May 31, 1985, rejecting his simultaneous oil and gas lease application M 62700 (ND) (Acq.), because he had failed to return signed lease forms within the time allowed.

Welsh's application was given first priority for parcel MT 601 in the October 1984, oil and gas lease drawing. On April 10, 1985, BLM sent appellant copies of the lease forms and attached stipulations for signature. In the cover letter to the lease forms Welsh was given notice that he should sign, date, and return the lease forms to BLM within 30 days of receipt. A return receipt card attached to the file copy of this notice indicates it was

received on April 18, 1985. ^{1/} The return receipt card bears the signature of Deb(?) Orbin.

In his statement of reasons for appeal, appellant states he has "no record of ever having received [the] lease forms for signature or [the] Notice of April 10, 1985, requesting return of signed lease forms." Appellant speculates that an incorrect version of his name in BLM's records may be responsible. However, the name and address on the April 10, 1985, cover letter and the file copy of the lease form were the same as those identified by Welsh as being correct.

[1] The applicable regulation requires:

The lease agreement, consisting of a lease form approved by the Director, and stipulations included on the posted list or later determined to be necessary, shall be forwarded to the selected applicant, if qualified, for signing. * * * The signed lease agreement shall be filed in the proper BLM office within 30 days from the date of receipt of the notice, and shall constitute the applicant's offer to lease.

43 CFR 3112.6-1(a). Further, "[t]he application of the selected applicant shall be rejected if an offer is not filed in accordance with § 3112.6-1 of this title." 43 CFR 3112.5-1(c).

As this Board stated in F. Miles Ezell, 86 IBLA 146, 147 (1985),

These or similar regulations have been in effect for years within the Department. They have been consistently interpreted as requiring rejection of any lease application or offer where the rental payment or signed lease forms have not been timely returned to BLM. See, e.g., Eagle Basin Partnership, 76 IBLA 241 (1983); Robert D. Nininger, 16 IBLA 200 (1974); aff'd, Nininger v. Morton, Civ. No. 74-1246 (D.D.C. Mar. 25, 1975). This consistent course of adjudication was remarked upon by the U.S. Court of Appeals for the Tenth Circuit in Dawson v. Andrus, 612 F.2d 1280, 1283 (1980), which affirmed rejection of a lease offer for failure to timely pay the advance rental. As all of these cases make clear, the Board has no authority to waive the failure to timely submit the advance rental and signed lease forms regardless of any justification for this failure that an applicant might present.

See also Janet R. Larson, 91 IBLA 151 (1986); Raymond C. Long, 83 IBLA 342 (1984); C. H. Postlewait, 83 IBLA 156 (1984).

^{1/} BLM did not inscribe the name and address of the addressee in the appropriate space on the return receipt card. However the address on the letter is that admitted by Welsh to be correct. We recommend BLM properly complete return receipt cards.

[2] The case file indicates BLM sent the notice and accompanying lease forms to appellant at his last address of record.

Where the authorized officer uses the mails to send a notice or other communication to any person entitled to such a communication * * * that person will be deemed to have received the communication if it was delivered to his last address of record in the appropriate office of the Bureau of Land Management, regardless of whether it was in fact received by him.

43 CFR 1810.2(b).

Appellant was given 30 days to return the executed lease offer forms. The return receipt for the envelope containing the documents indicates the documents were delivered to Welsh's address of record on April 18, 1985. Appellant admits his address of record was accurate. Therefore they were due on May 20, 1985. The applicable regulation, 43 CFR 1810.2, provides that the addressee of a communication will be deemed to have received such communication, whether or not received in fact, if it was delivered to his last known address of record in the appropriate office of BLM. See Michele M. Dawursk, 71 IBLA 343 (1983); Larry L. Lowenstein, 57 IBLA 95 (1981). There is no allegation or evidence that appellant executed and returned the required forms as required by 43 CFR 3112.6-1(a). Therefore, we hold that BLM properly rejected appellant's lease application, pursuant to the requirements of 43 CFR 3112.5-1(c).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Montana State Office is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

John H. Kelly
Administrative Judge

